

AMENDED IN SENATE JUNE 21, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 19, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1130**

---

### **Introduced by Assembly Member Laird**

February 23, 2007

---

An act to amend Sections 25270.2, 25270.3, 25270.6, 25270.8, 25270.12, 25270.13, 25404, 25404.1.1, and 25404.5 of, to add Section 25270.4.5 to, to repeal Sections 25270.1, 25270.7, and 25270.10 of, to repeal and add Sections 25270, 25270.4, 25270.5, and 25270.9 of, and to repeal, add, and repeal Section 25270.11 of, the Health and Safety Code, relating to aboveground storage tanks.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1130, as amended, Laird. Aboveground storage tanks.

(1) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

The Aboveground Petroleum Storage Act (Act) defines, for purposes of the act, a “storage tank” as any aboveground tank or container used for the storage of petroleum, except as specified. Existing law requires the State Water Resources Control Board and the California regional

water quality control boards to administer the act with regard to a tank facility that is subject to specified federal regulations and requires a certified unified program agency to enforce the requirements of the act regarding a spill prevention control and countermeasure plan. Existing law imposes specified inspection and monitoring requirements upon the board and the regional boards with regard to these tanks and requires a tank facility owner or operator to file a storage statement with the board. Existing law establishes the Environmental Protection Trust Fund in the State Treasury and provides that the money in the fund is available for expenditure by the board, upon appropriation by the Legislature, for specified purposes.

This bill would instead require the ~~Unified Program Agency (UPA)~~ *unified program agencies (UPAs)* to implement that act, and would make conforming changes.

The bill would define the term “aboveground storage tank” and would revise the types of storage tanks subject to the act. A storage tank at a tank facility subject to specified federal regulations would be required to prepare a spill prevention control and countermeasure plan and a tank facility located on a farm, nursery, logging site, or construction site that is less than a specified capacity would be required to be subject to inspections and, *if the UPA makes a certain determination*, secondary containment requirements.

The bill would require the UPA to inspect, at least once every 3 years, each storage tank within its jurisdiction that has a storage capacity of 10,000 gallons or more of petroleum, except as specified. The owner or operator of a tank facility would be required to file an annual tank facility statement with the local agency, accompanied by a fee established by the UPA.

The board, the regional board, and the UPA would be ~~required~~ *authorized* to oversee the cleanup or abatement efforts, or to cause cleanup or abatement efforts, with regard to a release from a storage tank at a tank facility.

Any expenses recovered by the board or a regional board in overseeing, or contracting for, a cleanup or abatement would be required to be deposited in the Waste Discharge Permit Fund, for expenditure by the board, upon appropriation by the Legislature, to assist the regional boards and other public agencies in cleaning up or abating the effects of waste on water and other specified purposes. The bill would require the deposited money to be separately accounted for.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the regulation of aboveground storage tanks.

The bill would authorize the expenditure of a portion of the ~~money~~ *moneys* in the Environmental Protection Trust Fund, ~~as of January 1, 2008~~ upon appropriation by the Legislature, in an amount determined by the Secretary of Environmental Protection in consultation with the UPAs, to a training account established and maintained by the secretary to be used for purposes of training UPA personnel in the requirements of the act, and would authorize the expenditure of all remaining funds to the UPAs to implement the act. Any funds remaining in the training account established by the secretary, *or in the Environmental Protection Trust Fund*, as of June 1, 2011, ~~upon appropriation by the Legislature~~ would be authorized to be expended by the UPAs to implement the act, *upon appropriation by the Legislature*. The Environmental Protection Trust Fund and the training account would be inoperative as of July 1, 2011, and would be repealed as of January 1, 2012.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 25270 of the Health and Safety Code is
- 2 repealed.
- 3 SEC. 2. Section 25270 is added to the Health and Safety Code,
- 4 to read:
- 5 25270. This chapter shall be known and may be cited as the
- 6 Aboveground Petroleum Storage Act.
- 7 SEC. 3. Section 25270.1 of the Health and Safety Code is
- 8 repealed.
- 9 SEC. 4. Section 25270.2 of the Health and Safety Code is
- 10 amended to read:
- 11 25270.2. For purposes of this chapter, the following definitions
- 12 apply:

1 (a) “Aboveground storage tank” or “storage tank” means a tank  
2 that has the capacity to store 55 gallons or more of petroleum and  
3 that is substantially or totally above the surface of the ground.

4 “Aboveground storage tank” does not include any of the following:

5 (1) A pressure vessel or boiler that is subject to Part 6  
6 (commencing with Section 7620) of Division 5 of the Labor Code.

7 (2) A tank containing hazardous waste, as defined in subdivision  
8 (g) of Section 25316, if the Department of Toxic Substances  
9 Control has issued the person owning or operating the tank a  
10 hazardous waste facilities permit for the storage tank.

11 (3) An aboveground oil production tank that is subject to Section  
12 3106 of the Public Resources Code.

13 (4) Oil-filled electrical equipment, including, but not limited  
14 to, transformers, circuit breakers, or capacitors, if the oil-filled  
15 electrical equipment meets either of the following conditions:

16 (A) The equipment contains less than 10,000 gallons of dielectric  
17 fluid.

18 (B) The equipment contains 10,000 gallons or more of dielectric  
19 fluid with PCB levels less than 50 parts per million, appropriate  
20 containment or diversionary structures or equipment are employed  
21 to prevent discharged oil from reaching a navigable water course,  
22 and the electrical equipment is visually inspected in accordance  
23 with the usual routine maintenance procedures of the owner or  
24 operator.

25 (5) A tank regulated as an underground storage tank under  
26 Chapter 6.7 (commencing with Section 25280) and Chapter 16  
27 (commencing with Section 2610) of Division 3 of Title 23 of the  
28 California Code of Regulations.

29 (6) Any transportation-related tank facility, subject to the  
30 authority and control of the United States Department of  
31 Transportation, as defined in the Memorandum of Understanding  
32 between the Secretary of Transportation and the Administrator of  
33 the United States Environmental Protection Agency, dated  
34 November 24, 1971, set forth in Appendix A to Part 112  
35 (commencing with Section 112.1) of Subchapter D of Chapter I  
36 of Title 40 of the Code of Federal Regulations.

37 (b) “Board” means the State Water Resources Control Board.

38 (c) (1) “Certified Unified Program Agency” or “CUPA” means  
39 the agency certified by the Secretary for Environmental Protection

1 to implement the unified program specified in Chapter 6.11  
2 (commencing with Section 25404) within a jurisdiction.

3 (2) "Participating Agency" or "PA" means an agency that has  
4 a written agreement with the CUPA pursuant to subdivision (d)  
5 of Section 25404.3, and is approved by the secretary, to implement  
6 and enforce the unified program element specified in paragraph  
7 (2) of subdivision (c) of Section 25404, in accordance with Sections  
8 25404.1 and 25404.2.

9 (3) (A) "Unified Program Agency" or "UPA" means the CUPA,  
10 or its participating agencies to the extent that each PA has been  
11 designated by the CUPA, pursuant to a written agreement, to  
12 implement and enforce the unified program element specified in  
13 paragraph (2) of subdivision (c) of Section 25404. The UPAs have  
14 the responsibility and authority, to the extent provided by this  
15 chapter and Sections 25404.1 and 25404.2, to implement and  
16 enforce the requirements of this chapter.

17 (B) After a CUPA has been certified by the secretary, the unified  
18 program agency shall be the only agency authorized to enforce the  
19 requirements of this chapter..

20 (C) This paragraph shall not be construed to limit the authority  
21 or responsibility granted to the board and the regional boards by  
22 this chapter.

23 (d) "Operator" means the person responsible for the overall  
24 operation of a tank facility.

25 (e) "Owner" means the person who owns the tank facility or  
26 part of the tank facility.

27 (f) "Person" means an individual, trust, firm, joint stock  
28 company, corporation, including a government corporation,  
29 partnership, limited liability company, or association. "Person"  
30 also includes any city, county, district, the University of California,  
31 the California State University, the state, any department or agency  
32 thereof, and the United States, to the extent authorized by federal  
33 law.

34 (g) "Petroleum" means crude oil, or any fraction thereof, which  
35 is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds  
36 per square inch absolute pressure.

37 (h) "Regional board" means a California regional water quality  
38 control board.

(i) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(j) “Secretary” means the Secretary for Environmental Protection.

(k) “Storage” or “store” means the containment, handling, or treatment of petroleum, for any period of time, including on a temporary basis.

(l) “Storage capacity” means the aggregate capacity of all aboveground tanks at a tank facility.

(m) “Tank facility” means any one, or combination of, aboveground storage tanks, including any piping that is integral to the tank, that contains petroleum and that is used by a single business entity at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is between the containment area and the first flange or valve outside the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

SEC. 5. Section 25270.3 of the Health and Safety Code is amended to read:

25270.3. A tank facility is subject to this chapter ~~if the tank if~~ *the tank* facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations or the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

SEC. 6. Section 25270.4 of the Health and Safety Code is repealed.

SEC. 7. Section 25270.4 is added to the Health and Safety Code, to read:

25270.4. This chapter shall be implemented by the Unified Program Agency. If there is no UPA, the agency authorized pursuant to subdivision (f) of Section 25404.3 shall be deemed to be the UPA for purposes of this chapter and shall implement this chapter.

SEC. 8. Section 25270.4.5 is added to the Health and Safety Code, to read:

25270.4.5. (a) Except as provided in subdivision (b), each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan prepared in accordance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to assure compliance with Section 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at the location exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. The owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum.

(2) Allow the UPA to conduct a periodic inspection of the tank facility.

~~(3) Install a secondary means of containment for the entire contents of the largest storage tank at the tank facility, plus sufficient space for precipitation, if the UPA determines this installation is necessary for the protection of the waters of the state.~~

*(3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.*

SEC. 9. Section 25270.5 of the Health and Safety Code is repealed.

1 SEC. 10. Section 25270.5 is added to the Health and Safety  
2 Code, to read:

3 25270.5. (a) Except as provided in subdivision (b), at least  
4 once every three years, the UPA shall inspect each storage tank  
5 or a representative sampling of the storage tanks at each tank  
6 facility that has a storage capacity of 10,000 gallons or more of  
7 petroleum. The purpose of the inspection shall be to determine  
8 whether the owner or operator is in compliance with the spill  
9 prevention control and countermeasure plan requirements of this  
10 chapter.

11 (b) The UPA may develop an alternative inspection and  
12 compliance plan, subject to approval by the secretary.

13 (c) An inspection conducted pursuant to this section does not  
14 require the oversight of a professional engineer.

15 SEC. 11. Section 25270.6 of the Health and Safety Code is  
16 amended to read:

17 25270.6. (a) On or before January 1, 2009, and on or before  
18 January 1 annually thereafter, each owner or operator of a tank  
19 facility subject to this chapter shall file with the UPA a tank facility  
20 statement that shall identify the name and address of the tank  
21 facility, a contact person for the tank facility, the total storage  
22 capacity of the tank facility, and the location, size, age, and  
23 contents of each storage tank that exceeds 10,000 gallons in  
24 capacity and that holds a substance containing at least 5 percent  
25 of petroleum. A copy of a statement submitted previously pursuant  
26 to this section may be submitted in lieu of a new tank facility  
27 statement if no new or used storage tanks have been added to the  
28 facility or if no significant modifications have been made. For  
29 purposes of this section, a significant modification includes, but  
30 is not limited to, altering existing storage tanks or changing spill  
31 prevention or containment methods.

32 ~~(b) On or before January 1, 2010, and on or before January 1~~  
33 ~~of each year thereafter~~

34 *(b) Each year, commencing in calendar year 2010, each owner*  
35 *or operator of a tank facility who is required to submit a tank*  
36 *facility statement pursuant to subdivision (a) shall pay a fee to the*  
37 *UPA, on or before a date specified by the UPA. The governing*  
38 *body of the UPA shall establish a fee, as part of the single fee*  
39 *system implemented pursuant to Section 25404.5, at a level*  
40 *sufficient to pay the necessary and reasonable costs incurred by*



1 the UPA in administering this chapter, including but not limited  
2 to, inspections, enforcement, and administrative costs. The UPA  
3 may provide for a waiver of these fees when a state or local  
4 government agency submits a tank facility statement.

5 SEC. 12. Section 25270.7 of the Health and Safety Code is  
6 repealed.

7 SEC. 13. Section 25270.8 of the Health and Safety Code is  
8 amended to read:

9 25270.8. Each owner or operator of a tank facility shall  
10 immediately, upon discovery, notify the Office of Emergency  
11 Services and the UPA using the appropriate 24-hour emergency  
12 number or the 911 number, as established by the UPA, or by the  
13 governing body of the UPA, of the occurrence of a spill or other  
14 release of one barrel (42 gallons) or more of petroleum that is  
15 required to be reported pursuant to subdivision (a) of Section 13272  
16 of the Water Code.

17 SEC. 14. Section 25270.9 of the Health and Safety Code is  
18 repealed.

19 SEC. 15. Section 25270.9 is added to the Health and Safety  
20 Code, to read:

21 25270.9. (a) The board, the regional board, and the UPA ~~shall~~  
22 *may* oversee cleanup or abatement efforts, or cause cleanup or  
23 abatement efforts, of a release from a storage tank at a tank facility.  
24 The UPA may refer the oversight or cleanup of a release from a  
25 storage tank at a tank facility to a regional board for action, if  
26 appropriate, pursuant to Division 7 (commencing with Section  
27 13000) of the Water Code.

28 (b) The reasonable expenses of the board, the regional board,  
29 and the UPA incurred in overseeing, or contracting for, ~~a cleanup~~  
30 ~~or abatement that results~~ *cleanup or abatement efforts that result*  
31 from a release at a tank facility is a charge against the owner or  
32 operator of the tank facility. Expenses ~~reimbursed~~ *reimbursable*  
33 to a public agency under this section are a debt of the tank facility  
34 owner or operator, and shall be collected in the same ~~manner as~~  
35 ~~in the case of an express or implied obligation under contract.~~  
36 *manner as in the case of an obligation under a contract, express*  
37 *or implied.*

38 (c) Expenses recovered by the board or a regional board pursuant  
39 to this section shall be deposited into the Waste Discharge Permit  
40 Fund. These moneys shall be separately accounted for, and shall

1 be expended by the board, upon appropriation by the Legislature,  
2 to assist regional boards and other public agencies with authority  
3 to clean up waste or abate the effects of the waste, in cleaning up  
4 or abating the effects of the waste on waters of the state, or for the  
5 purposes authorized in Section 13443.

6 (d) The expenses recovered by the UPA pursuant to this section  
7 shall be deposited in an account maintained by the UPA for the  
8 purposes of carrying out this chapter.

9 SEC. 16. Section 25270.10 of the Health and Safety Code is  
10 repealed.

11 SEC. 17. Section 25270.11 of the Health and Safety Code is  
12 repealed.

13 SEC. 18. Section 25270.11 is added to the Health and Safety  
14 Code, to read:

15 25270.11. (a) All ~~money remaining~~ moneys in the  
16 Environmental Protection Trust Fund ~~as of January 1, 2008~~, may  
17 be expended, upon appropriation by the Legislature, in the  
18 following manner:

19 (1) A portion of the funds, in an amount determined by the  
20 secretary in consultation with the UPAs, to a training account  
21 established and maintained by the secretary, to be used for purposes  
22 of training UPA personnel in the requirements of this chapter.

23 (2) All remaining funds in the Environmental Protection Trust  
24 Fund, shall be allocated to the UPAs, in accordance with a formula  
25 and process determined by the secretary in consultation with the  
26 UPAs. The UPAs shall expend those funds for the purpose of  
27 implementing this chapter.

28 (b) All moneys remaining in the training account established  
29 pursuant to paragraph (1) of subdivision (a), as of June 1, 2011,  
30 may be expended pursuant to paragraph (2) of subdivision (a),  
31 upon appropriation by the Legislature.

32 (c) *All moneys remaining in the Environmental Protection Trust*  
33 *Fund that have not been expended, as of June 1, 2011, shall be*  
34 *expended pursuant to paragraph (2) of subdivision (a), upon*  
35 *appropriation by the Legislature.*

36 (e)  
37 (d) This section shall become inoperative on July 1, 2011, and,  
38 as of January 1, 2012, is repealed, unless a later enacted statute,  
39 that becomes operative on or before January 1, 2012, deletes or  
40 extends the dates on which it becomes inoperative and is repealed.

1 SEC. 19. Section 25270.12 of the Health and Safety Code is  
2 amended to read:

3 25270.12. (a) Any owner or operator of a tank facility who  
4 fails to prepare a spill prevention control and countermeasure plan  
5 in compliance with subdivision (a) of Section 25270.4.5, to file a  
6 tank facility statement pursuant to subdivision (a) of Section  
7 25270.6, to submit the fee required by subdivision (b) of Section  
8 25270.6, to report spills as required by Section 25270.8, or  
9 otherwise to comply with the requirements of this chapter, is  
10 subject to a civil penalty of not more than five thousand dollars  
11 (\$5,000) for each day on which the violation continues. If the  
12 owner or operator commits a second or subsequent violation, a  
13 civil penalty of not more than ten thousand dollars (\$10,000) for  
14 each day on which the violation continues may be imposed.

15 (b) (1) The civil penalties provided by this section may be  
16 assessed and recovered in a civil action brought by the city attorney  
17 or district attorney on behalf of the UPA.

18 (2) Fifty percent of all penalties assessed and recovered in a  
19 civil action brought on behalf of a UPA pursuant to this subdivision  
20 shall be deposited into a unified program account established by  
21 the UPA for the purpose of carrying out the functions of the unified  
22 program and 50 percent shall be paid to the office of the city  
23 attorney or district attorney, whoever brought that action.

24 (c) (1) The civil penalties provided in this section may be  
25 assessed and recovered in a civil action brought by the Attorney  
26 General on behalf of the board or a regional board, or on behalf  
27 of the people of the State of California.

28 (2) All penalties assessed and recovered in a civil action brought  
29 pursuant to this subdivision shall be deposited in the Waste  
30 Discharge Permit Fund. These moneys shall be separately  
31 accounted for, and shall be expended by the board, upon  
32 appropriation by the Legislature, to assist regional boards and other  
33 public agencies with authority to clean up waste or abate the effects  
34 of the waste, in cleaning up or abating the effects of the waste on  
35 waters of the state, or for the purposes authorized in Section 13443.

36 (d) The city attorney, district attorney, or the Attorney General  
37 may seek to enjoin, in any court of competent jurisdiction, any  
38 person believed to be in violation of this chapter.

39 (e) The penalties specified in this section are in addition to any  
40 other penalties provided by law.

1 SEC. 20. Section 25270.13 of the Health and Safety Code is  
2 amended to read:

3 25270.13. (a) This chapter does not preempt local storage tank  
4 ordinances, in effect as of August 16, 1989, that meet or exceed  
5 the standards prescribed by this chapter.

6 (b) This chapter does not preempt the authority granted to the  
7 board and the regional boards under the Porter Cologne Water  
8 Quality Control Act (Division 7 (commencing with Section 13000)  
9 of the Water Code).

10 SEC. 21. Section 25404 of the Health and Safety Code is  
11 amended to read:

12 25404. (a) For purposes of this chapter, the following terms  
13 shall have the following meanings:

14 (1) (A) “Certified Unified Program Agency” or “CUPA” means  
15 the agency certified by the secretary to implement the unified  
16 program specified in this chapter within a jurisdiction.

17 (B) “Participating Agency” or “PA” means a state or local  
18 agency that has a written agreement with the CUPA pursuant to  
19 subdivision (d) of Section 25404.3, and is approved by the  
20 secretary, to implement or enforce one or more of the unified  
21 program elements specified in subdivision (c), in accordance with  
22 Sections 25404.1 and 25404.2.

23 (C) “Unified Program Agency” or “UPA” means the CUPA, or  
24 its participating agencies to the extent each PA has been designated  
25 by the CUPA, pursuant to a written agreement, to implement or  
26 enforce a particular unified program element specified in  
27 subdivision (c). The UPAs have the responsibility and authority  
28 to implement and enforce the requirements listed in subdivision  
29 (c), and the regulations adopted to implement the requirements  
30 listed in subdivision (c), to the extent provided by Chapter 6.5  
31 (commencing with Section 25100), Chapter 6.67 (commencing  
32 with Section 25270), Chapter 6.7 (commencing with Section  
33 25280), Chapter 6.95 (commencing with Section 25500), and  
34 Sections 25404.1 and 25404.2. After a CUPA has been certified  
35 by the secretary, the unified program agencies and the state  
36 agencies carrying out responsibilities under this chapter shall be  
37 the only agencies authorized to enforce the requirements listed in  
38 subdivision (c) within the jurisdiction of the CUPA.

39 (2) “Department” means the Department of Toxic Substances  
40 Control.

1 (3) “Minor violation” means the failure of a person to comply  
2 with any requirement or condition of any applicable law,  
3 regulation, permit, information request, order, variance, or other  
4 requirement, whether procedural or substantive, of the unified  
5 program that the UPA is authorized to implement or enforce  
6 pursuant to this chapter, and that does not otherwise include any  
7 of the following:

8 (A) A violation that results in injury to persons or property, or  
9 that presents a significant threat to human health or the  
10 environment.

11 (B) A knowing, willful, or intentional violation.

12 (C) A violation that is a chronic violation, or that is committed  
13 by a recalcitrant violator. In determining whether a violation is  
14 chronic or a violator is recalcitrant, the UPA shall consider whether  
15 there is evidence indicating that the violator has engaged in a  
16 pattern of neglect or disregard with respect to applicable regulatory  
17 requirements.

18 (D) A violation that results in an emergency response from a  
19 public safety agency.

20 (E) A violation that enables the violator to benefit economically  
21 from the noncompliance, either by reduced costs or competitive  
22 advantage.

23 (F) A class I violation as provided in Section 25117.6.

24 (G) A class II violation committed by a chronic or a recalcitrant  
25 violator, as provided in Section 25117.6.

26 (H) A violation that hinders the ability of the UPA to determine  
27 compliance with any other applicable local, state, or federal rule,  
28 regulation, information request, order, variance, permit, or other  
29 requirement.

30 (4) “Secretary” means the Secretary for Environmental  
31 Protection.

32 (5) “Unified program facility” means all contiguous land and  
33 structures, other appurtenances, and improvements on the land  
34 that are subject to the requirements listed in subdivision (c).

35 (6) “Unified program facility permit” means a permit issued  
36 pursuant to this chapter. For the purposes of this chapter, a unified  
37 program facility permit encompasses the permitting requirements  
38 of Section 25284, and any permit or authorization requirements  
39 under any local ordinance or regulation relating to the generation  
40 or handling of hazardous waste or hazardous materials, but does

1 not encompass the permitting requirements of a local ordinance  
2 that incorporates provisions of the Uniform Fire Code or the  
3 Uniform Building Code.

4 (b) The secretary shall adopt implementing regulations and  
5 implement a unified hazardous waste and hazardous materials  
6 management regulatory program, which shall be known as the  
7 unified program, after holding an appropriate number of public  
8 hearings throughout the state. The unified program shall be  
9 developed in close consultation with the director, the Director of  
10 the Office of Emergency Services, the State Fire Marshal, the  
11 executive officers and chairpersons of the State Water Resources  
12 Control Board and the California regional water quality control  
13 boards, the local health officers, local fire services, and other  
14 appropriate officers of interested local agencies, and affected  
15 businesses and interested members of the public, including  
16 environmental organizations.

17 (c) The unified program shall consolidate the administration of  
18 the following requirements, and shall, to the maximum extent  
19 feasible within statutory constraints, ensure the coordination and  
20 consistency of any regulations adopted pursuant to those  
21 requirements:

22 (1) (A) Except as provided in subparagraphs (B) and (C), the  
23 requirements of Chapter 6.5 (commencing with Section 25100),  
24 and the regulations adopted by the department pursuant thereto,  
25 are applicable to all of the following:

26 (i) Hazardous waste generators, persons operating pursuant to  
27 a permit-by-rule, conditional authorization, or conditional  
28 exemption, pursuant to Chapter 6.5 (commencing with Section  
29 25100) or the regulations adopted by the department.

30 (ii) Persons managing perchlorate materials.

31 (iii) Persons subject to Article 10.1 (commencing with Section  
32 25211) of Chapter 6.5.

33 (B) The unified program shall not include the requirements of  
34 paragraph (3) of subdivision (c) of Section 25200.3, the  
35 requirements of Sections 25200.10 and 25200.14, and the authority  
36 to issue an order under Sections 25187 and 25187.1, with regard  
37 to those portions of a unified program facility that are subject to  
38 one of the following:

39 (i) A corrective action order issued by the department pursuant  
40 to Section 25187.

1 (ii) An order issued by the department pursuant to Chapter 6.8  
2 (commencing with Section 25300) or Chapter 6.85 (commencing  
3 with Section 25396).

4 (iii) A remedial action plan approved pursuant to Chapter 6.8  
5 (commencing with Section 25300) or Chapter 6.85 (commencing  
6 with Section 25396).

7 (iv) A cleanup and abatement order issued by a California  
8 regional water quality control board pursuant to Section 13304 of  
9 the Water Code, to the extent that the cleanup and abatement order  
10 addresses the requirements of the applicable section or sections  
11 listed in this subparagraph.

12 (v) Corrective action required under subsection (u) of Section  
13 6924 of Title 42 of the United States Code or subsection (h) of  
14 Section 6928 of Title 42 of the United States Code.

15 (vi) An environmental assessment pursuant to Section 25200.14  
16 or a corrective action pursuant to Section 25200.10 or paragraph  
17 (3) of subdivision (c) of Section 25200.3, that is being overseen  
18 by the department.

19 (C) The unified program shall not include the requirements of  
20 Chapter 6.5 (commencing with Section 25100), and the regulations  
21 adopted by the department pursuant thereto, applicable to persons  
22 operating transportable treatment units, except that any required  
23 notice regarding transportable treatment units shall also be provided  
24 to the CUPAs.

25 (2) The requirements of Chapter 6.67 (commencing with Section  
26 25270) concerning aboveground storage tanks.

27 (3) (A) Except as provided in subparagraphs (B) and (C), the  
28 requirements of Chapter 6.7 (commencing with Section 25280)  
29 concerning underground storage tanks and the requirements of any  
30 underground storage tank ordinance adopted by a city or county.

31 (B) The unified program may not include the responsibilities  
32 assigned to the State Water Resources Control Board pursuant to  
33 Section 25297.1.

34 (C) The unified program may not include the corrective action  
35 requirements of Sections 25296.10 to 25296.40, inclusive.

36 (4) The requirements of Article 1 (commencing with Section  
37 25500) of Chapter 6.95 concerning hazardous material release  
38 response plans and inventories.

1 (5) The requirements of Article 2 (commencing with Section  
2 25531) of Chapter 6.95, concerning the accidental release  
3 prevention program.

4 (6) The requirements of subdivisions (b) and (c) of Section  
5 80.103 of the Uniform Fire Code, as adopted by the State Fire  
6 Marshal pursuant to Section 13143.9 concerning hazardous material  
7 management plans and inventories.

8 (d) To the maximum extent feasible within statutory constraints,  
9 the secretary shall consolidate, coordinate, and make consistent  
10 these requirements of the unified program with other requirements  
11 imposed by other federal, state, regional, or local agencies upon  
12 facilities regulated by the unified program.

13 (e) (1) The secretary shall establish standards applicable to  
14 CUPAs, participating agencies, state agencies, and businesses  
15 specifying the data to be collected and submitted by unified  
16 program agencies in administering the programs listed in  
17 subdivision (c). Those standards shall incorporate any standard  
18 developed under Section 25503.3.

19 (2) The secretary shall establish an electronic geographic  
20 information management system capable of receiving all data  
21 collected by the unified program agencies pursuant to this  
22 subdivision and Section 25504.1. The secretary shall make all  
23 nonconfidential data available on the Internet.

24 (3) (A) As funding becomes available, the secretary shall  
25 establish, consistent with paragraph (2), and thereafter maintain,  
26 a statewide database.

27 (B) The secretary, or one or more of the boards, departments,  
28 or offices within the California Environmental Protection Agency,  
29 shall seek available federal funding for purposes of implementing  
30 this subdivision.

31 (4) Once the statewide database is established, the secretary  
32 shall work with the CUPAs to develop a phased-in schedule for  
33 the electronic collection and submittal of information to be included  
34 in the statewide database, giving first priority to information  
35 relating to those chemicals determined by the secretary to be of  
36 greatest concern. The secretary, in making this determination shall  
37 consult with the CUPAs, the Office of Emergency Services, the  
38 State Fire Marshal, and the boards, departments, and offices within  
39 the California Environmental Protection Agency. The information  
40 initially included in the statewide database shall include, but is not



1 limited to, the hazardous materials inventory information required  
2 to be submitted pursuant to Section 25504.1 for perchlorate  
3 materials.

4 *SEC. 22. Section 25404.1.1 of the Health and Safety Code is*  
5 *amended to read:*

6 25404.1.1. (a) If the unified program agency determines that  
7 a person has committed, or is committing, a violation of any law,  
8 regulation, permit, information request, order, variance, or other  
9 requirement that the UPA is authorized to enforce or implement  
10 pursuant to this chapter, the UPA may issue an administrative  
11 enforcement order requiring that the violation be corrected and  
12 imposing an administrative penalty, in accordance with the  
13 following:

14 (1) Except as provided in paragraph (5), if the order is for a  
15 violation of Chapter 6.5 (commencing with Section 25100), the  
16 violator shall be subject to the applicable administrative penalties  
17 provided by that chapter.

18 (2) If the order is for a violation of Chapter 6.7 (commencing  
19 with Section 25280), the violator shall be subject to the applicable  
20 civil penalties provided in subdivisions (a), (b), (c), and (e) of  
21 Section 25299.

22 (3) If the order is for a violation of Article 1 (commencing with  
23 Section 25500) of Chapter 6.95, the violator shall be subject to a  
24 penalty that is consistent with the administrative penalties imposed  
25 pursuant to Section 25514.5.

26 (4) If the order is for a violation of Article 2 (commencing with  
27 Section 25531) of Chapter 6.95, the violator shall be subject to a  
28 penalty that is consistent with the administrative penalties imposed  
29 pursuant to Section 25540 or 25540.5.

30 (5) If the order is for a violation of ~~Section 25270.5~~ 25270.4.5,  
31 the violator shall be liable for a penalty of not more than five  
32 thousand dollars (\$5,000) for each day on which the violation  
33 continues. If the violator commits a second or subsequent violation,  
34 a penalty of not more than ten thousand dollars (\$10,000) for each  
35 day on which the violation continues may be imposed.

36 (b) In establishing a penalty amount and ordering that the  
37 violation be corrected pursuant to this section, the UPA shall take  
38 into consideration the nature, circumstances, extent, and gravity  
39 of the violation, the violator's past and present efforts to prevent,  
40 abate, or clean up conditions posing a threat to the public health

1 or safety or the environment, the violator's ability to pay the  
2 penalty, and the deterrent effect that the imposition of the penalty  
3 would have on both the violator and the regulated community.

4 (c) Any order issued pursuant to this section shall be served by  
5 personal service or certified mail and shall inform the person served  
6 of the right to a hearing. If the UPA issues an order pursuant to  
7 this section, the order shall state whether the hearing procedure  
8 specified in paragraph (2) of subdivision (e) may be requested by  
9 the person receiving the order.

10 (d) Any person served with an order pursuant to this section  
11 who has been unable to resolve any violation with the UPA, may  
12 within 15 days after service of the order, request a hearing pursuant  
13 to subdivision (e) by filing with the UPA a notice of defense. The  
14 notice shall be filed with the office that issued the order. A notice  
15 of defense shall be deemed filed within the 15-day period provided  
16 by this subdivision if it is postmarked within that 15-day period.  
17 If no notice of defense is filed within the time limits provided by  
18 this subdivision, the order shall become final.

19 (e) Except as provided in subparagraph (B) of paragraph (2), a  
20 person requesting a hearing on an order issued by the UPA under  
21 this section may select the hearing officer specified in either  
22 paragraph (1) or (2) in the notice of defense filed with the UPA  
23 pursuant to subdivision (d). If a notice of defense is filed but no  
24 hearing officer is selected, the UPA may select the hearing officer.  
25 Within 90 days of receipt of the notice of defense by the UPA, the  
26 hearing shall be scheduled using one of the following:

27 (1) An administrative law judge of the Office of Administrative  
28 Hearings of the Department of General Services, who shall conduct  
29 the hearing in accordance with Chapter 4.5 (commencing with  
30 Section 11400) of Part 1 of Division 3 of Title 2 of the Government  
31 Code, and the UPA shall have all the authority granted to an agency  
32 by those provisions.

33 (2) (A) A hearing officer designated by the UPA, who shall  
34 conduct the hearing in accordance with Chapter 4.5 (commencing  
35 with Section 11400) of Part 1 of Division 3 of Title 2 of the  
36 Government Code, and the UPA shall have all the authority granted  
37 to an agency by those provisions. When a hearing is conducted by  
38 a UPA hearing officer pursuant to this paragraph, the UPA shall  
39 issue a decision within 60 days after the hearing is conducted. Each  
40 hearing officer designated by a UPA shall meet the requirements

1 of Section 11425.30 of the Government Code and any other  
2 applicable restriction.

3 (B) A UPA, or a person requesting a hearing on an order issued  
4 by a UPA may select the hearing process specified in this paragraph  
5 in a notice of defense filed pursuant to subdivision (d) only if the  
6 UPA has, as of the date the order is issued pursuant to subdivision  
7 (c), selected a designated hearing officer and established a program  
8 for conducting a hearing in accordance with this paragraph.

9 (f) The hearing decision issued pursuant to paragraph (2) of  
10 subdivision (e) shall be effective and final upon issuance by the  
11 UPA. A copy of the decision shall be served by personal service  
12 or by certified mail upon the party served with the order, or their  
13 representative, if any.

14 (g) Any provision of an order issued under this section, except  
15 the imposition of an administrative penalty, shall take effect upon  
16 issuance by the UPA if the UPA finds that the violation or  
17 violations of law associated with that provision may pose an  
18 imminent and substantial endangerment to the public health or  
19 safety or the environment. A request for a hearing shall not stay  
20 the effect of that provision of the order pending a hearing decision.  
21 However, if the UPA determines that any or all provisions of the  
22 order are so related that the public health or safety or the  
23 environment can be protected only by immediate compliance with  
24 the order as a whole, the order as a whole, except the imposition  
25 of an administrative penalty, shall take effect upon issuance by  
26 the UPA. A request for a hearing shall not stay the effect of the  
27 order as a whole pending a hearing decision.

28 (h) A decision issued pursuant to paragraph (2) of subdivision  
29 (e) may be reviewed by a court pursuant to Section 11523 of the  
30 Government Code. In all proceedings pursuant to this section, the  
31 court shall uphold the decision of the UPA if the decision is based  
32 upon substantial evidence in the record as a whole. The filing of  
33 a petition for writ of mandate shall not stay any action required  
34 pursuant to this chapter or the accrual of any penalties assessed  
35 pursuant to this chapter. This subdivision does not prohibit the  
36 court from granting any appropriate relief within its jurisdiction.

37 (i) All administrative penalties collected from actions brought  
38 by a UPA pursuant to this section shall be paid to the UPA that  
39 imposed the penalty, and shall be deposited into a special account

1 that shall be expended to fund the activities of the UPA in enforcing  
2 this chapter.

3 (j) The UPA shall consult with the district attorney, county  
4 counsel, or city attorney on the development of policies to be  
5 followed in exercising the authority delegated pursuant to this  
6 section as it relates to the authority of the UPA to issue orders.

7 (k) (1) A unified program agency may suspend or revoke any  
8 unified program facility permit, or an element of a unified program  
9 facility permit, for not paying the permit fee or a fine or penalty  
10 associated with the permit in accordance with the procedures  
11 specified in this subdivision.

12 (2) If a permittee does not comply with a written notice from  
13 the unified program agency to the permittee to make the payments  
14 specified in paragraph (1) by the required date provided in the  
15 notice, the unified program agency may suspend or revoke the  
16 permit or permit element. If the permit or permit element is  
17 suspended or revoked, the permittee shall immediately discontinue  
18 operating that facility or function of the facility to which the permit  
19 element applies until the permit is reinstated or reissued.

20 (3) A permittee may request a hearing to appeal the suspension  
21 or revocation of a permit or element of a permit pursuant to this  
22 subdivision by requesting a hearing using the procedures provided  
23 in subdivision (d).

24 (l) This section does not do any of the following:

25 (1) Otherwise affect the authority of a UPA to take any other  
26 action authorized by any other provision of law, except the UPA  
27 shall not require a person to pay a penalty pursuant to this section  
28 and pursuant to a local ordinance for the same violation.

29 (2) Restrict the power of a city attorney, district attorney, county  
30 counsel, or the Attorney General to bring, in the name of the people  
31 of California, any criminal proceeding otherwise authorized by  
32 law.

33 (3) Prevent the UPA from cooperating with, or participating in,  
34 a proceeding specified in paragraph (2).

35 ~~SEC. 22.~~

36 *SEC. 23.* Section 25404.5 of the Health and Safety Code is  
37 amended to read:

38 25404.5. (a) (1) Each certified unified program agency shall  
39 institute a single fee system, which shall replace the fees levied  
40 pursuant to Sections 25201.14 and 25205.14, except for

1 transportable treatment units permitted under Section 25200.2,  
2 and which shall also replace any fees levied by a local agency  
3 pursuant to Sections 25143.10, 25270.6, 25287, 25513, and  
4 25535.5, or any other fee levied by a local agency specifically to  
5 fund the implementation of the provisions specified in subdivision  
6 (c) of Section 25404. Notwithstanding Sections 25143.10, ~~25270.6,~~  
7 ~~25201.14, 25205.14,~~ 25270.6, 25287, 25513, and 25535.5, a person  
8 who complies with the certified unified program agency's "single  
9 fee system" fee shall not be required to pay any fee levied pursuant  
10 to those sections, except for transportable treatment units permitted  
11 under Section 25200.2.

12 (2) (A) The governing body of the local certified unified  
13 program agency shall establish the amount to be paid by each  
14 person regulated by the unified program under the single fee system  
15 at a level sufficient to pay the necessary and reasonable costs  
16 incurred by the certified unified program agency and by any  
17 participating agency pursuant to the requirements of subparagraph  
18 (E) of paragraph (1) of subdivision (d) of Section 25404.3.

19 (B) The secretary shall establish the amount to be paid when  
20 the unified program agency is a state agency.

21 (3) The fee system may also be designed to recover the  
22 necessary and reasonable costs incurred by the certified unified  
23 program agency, or a participating agency pursuant to the  
24 requirements of subparagraph (E) of paragraph (1) of subdivision  
25 (d) of Section 25404.3, in administering provisions other than  
26 those specified in subdivision (c) of Section 25404, if the  
27 implementation and enforcement of those provisions has been  
28 incorporated as part of the unified program by the certified unified  
29 program agency pursuant to subdivision (b) of Section 25404.2,  
30 and if the single fee system replaces any fees levied as of January  
31 1, 1994, to fund the implementation of those additional provisions.

32 (4) The amount to be paid by a person regulated by the unified  
33 program may be adjusted to account for the differing costs of  
34 administering the unified program with respect to that person's  
35 regulated activities.

36 (b) (1) Except as provided in subdivision (d), the single fee  
37 system instituted by each certified unified program agency shall  
38 include an assessment on each person regulated by the unified  
39 program of a surcharge, the amount of which shall be determined  
40 by the secretary annually, to cover the necessary and reasonable

1 costs of the state agencies in carrying out their responsibilities  
2 under this chapter. The secretary may adjust the amount of the  
3 surcharge to be collected by different certified unified program  
4 agencies to reflect the different costs incurred by the state agencies  
5 in supervising the implementation of the unified program in  
6 different jurisdictions, and in supervising the implementation of  
7 the unified program in those jurisdictions for which the secretary  
8 has waived the assessment of the surcharge pursuant to subdivision  
9 (d). The certified unified program agency may itemize the amount  
10 of the surcharge on any bill, invoice, or return that the agency  
11 sends to a person regulated by the unified program. Each certified  
12 unified program agency shall transmit all surcharge revenues  
13 collected to the secretary on a quarterly basis. The surcharge shall  
14 be deposited in the Unified Program Account, which is hereby  
15 created in the General Fund and which may be expended, upon  
16 appropriation by the Legislature, by state agencies for the purposes  
17 of implementing this chapter.

18 (2) On or before January 10, 2001, the secretary shall report to  
19 the Legislature on whether the number of persons subject to  
20 regulation by the unified program in any county is insufficient to  
21 support the reasonable and necessary cost of operating the unified  
22 program using only the revenues from the fee. The secretary's  
23 report shall consider whether the surcharge required by subdivision  
24 (a) should include an assessment to be used to supplement the  
25 funding of unified program agencies that have a limited number  
26 of entities regulated under the unified program.

27 (c) Each certified unified program agency and the secretary  
28 shall, before the institution of the single fee system and the  
29 assessment of the surcharge, implement a fee accountability  
30 program designed to encourage more efficient and cost-effective  
31 operation of the program for which the single fee and surcharge  
32 are assessed. The fee accountability programs shall include those  
33 elements of the requirements of the plan adopted pursuant to former  
34 Section 25206, as it read on January 1, 1995, that the secretary  
35 determines are appropriate.

36 (d) The secretary may waive the requirement for a county to  
37 assess a surcharge pursuant to subdivision (b), if both of the  
38 following conditions apply:

39 (1) The county meets all of the following conditions:

1 (A) The county submits an application to the secretary for  
2 certification on or before January 1, 1996, that incorporates all of  
3 the requirements of this chapter, and includes the county's request  
4 for a waiver of the surcharge, and contains documentation that  
5 demonstrates, to the satisfaction of the secretary, both of the  
6 following:

7 (i) That the assessment of the surcharge will impose a significant  
8 economic burden on most businesses within the county.

9 (ii) That the combined dollar amount of the surcharge and the  
10 single fee system to be assessed by the county pursuant to  
11 subdivision (a) exceeds the combined dollar amount of all existing  
12 fees that are replaced by the single fee system for most businesses  
13 within the county.

14 (B) The application for certification, including the information  
15 required by subparagraph (A), is determined by the secretary to  
16 be complete, on or before April 30, 1996. The secretary, for good  
17 cause, may grant an extension of that deadline of up to 90 days.

18 (C) The county is certified by the secretary on or before  
19 December 31, 1996.

20 (D) On or before January 1, 1994, the county completed the  
21 consolidation of the administration of the hazardous waste  
22 generator program, the hazardous materials release response plans  
23 and inventories program, and the underground storage tank  
24 program, referenced in paragraphs (1), (3), and (4) of subdivision  
25 (c) of Section 25404, into a single program within the county's  
26 jurisdiction.

27 (E) The county demonstrates that it will consolidate the  
28 administration of all programs specified in subdivision (c) of  
29 Section 25404, and that it will also consolidate the administration  
30 of at least one additional program that regulates hazardous waste,  
31 hazardous substances, or hazardous materials, as specified in  
32 subdivision (d) of Section 25404.2, other than the programs  
33 specified in subdivision (c) of Section 25404, into a single program  
34 to be administered by a single agency in the county's jurisdiction  
35 at the time that the county's certification by the secretary becomes  
36 effective.

37 (2) The secretary makes all of the following findings:

38 (A) The county meets all of the criteria specified in paragraph  
39 (1).

1 (B) The assessment of the surcharge would impose a significant  
2 economic burden on most businesses within the county.

3 (C) The combined dollar amount of the surcharge and the single  
4 fee system to be assessed by the county pursuant to subdivision  
5 (a) would exceed the combined dollar amount of all existing fees  
6 that are replaced by the single fee system for most businesses  
7 within the county.

8 (D) The waiver of the surcharge for those counties applying for  
9 and qualifying for a waiver, and the resulting increase in the  
10 surcharge for other counties, would not, when considered  
11 cumulatively, impose a significant economic burden on businesses  
12 in any other county that does not apply for, or does not meet the  
13 criteria for, a waiver of the surcharge.

14 (e) The secretary shall review all of the requests for a waiver  
15 of the surcharge made pursuant to subdivision (d) simultaneously,  
16 so as to adequately assess the cumulative impact of granting the  
17 requested waivers on businesses in those counties that have not  
18 applied, or do not qualify, for a waiver, and shall grant or deny all  
19 requests for a waiver of the surcharge within 30 days from the date  
20 that the secretary certifies all counties applying, and qualifying,  
21 for a waiver. If the secretary finds that the grant of a waiver of the  
22 surcharge for all counties applying and qualifying for the waiver  
23 will impose a significant economic burden on businesses in one  
24 or more other counties, the secretary shall take either of the  
25 following actions:

26 (1) Deny all of the applications for a waiver of the surcharge.

27 (2) Approve only a portion of the waiver requests for counties  
28 meeting the criteria set forth in subdivision (d), to the extent that  
29 the approved waivers, when taken as a whole, meet the condition  
30 specified in subparagraph (D) of paragraph (2) of subdivision (d).  
31 In determining which of the counties' waiver requests to grant,  
32 the secretary shall consider all of the following factors:

33 (A) The relative degree to which the assessment of the surcharge  
34 will impose a significant economic burden on most businesses  
35 within each county applying and qualifying for a waiver.

36 (B) The relative degree to which the combined dollar amount  
37 of the surcharge and the single fee system to be assessed, pursuant  
38 to subdivision (a), by each county applying and qualifying for a  
39 waiver exceeds the combined dollar amount of all existing fees



1 that are replaced by the single fee system for most businesses  
2 within the county.

3 (C) The relative extent to which each county applying and  
4 qualifying for a waiver has incorporated, or will incorporate, upon  
5 certification, additional programs pursuant to subdivision (d) of  
6 Section 25404.2, into the unified program within the county's  
7 jurisdiction.

8 (f) The secretary may, at any time, terminate a county's waiver  
9 of the surcharge granted pursuant to subdivisions (d) and (e) if the  
10 secretary determines that the criteria specified in subdivision (d)  
11 for the grant of a waiver are no longer met.

12 ~~SEC. 23.~~

13 *SEC. 24.* No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 a local agency or school district has the authority to levy service  
16 charges, fees, or assessments sufficient to pay for the program or  
17 level of service mandated by this act, within the meaning of Section  
18 17556 of the Government Code.